

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	§	
	§	
Review of the Section 251 Unbundling	§	
Obligations of Incumbent Local	§	
Exchange Carriers	§	CC Docket No. 01-338
	§	
Implementation of the Local	§	
Competition Provisions of the	§	
Telecommunications Act of 1996	§	CC Docket No. 96-98
	§	
Deployment of Wireline Services	§	
Offering Advanced Telecommunications	§	CC Docket No. 98-147
Capability	§	
	§	
	§	

**Reply Comments of the
Public Utility Commission of Texas**

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I. Executive Summary

While it has been over six years since the passage of the Telecommunications Act of 1996 and almost two years since Southwestern Bell Telephone was granted entry into the long distance market in Texas, competitive local exchange carriers (CLECs) still serve only 14% of the access lines in Texas. The Texas PUC believes the Federal Communications Commission (FCC)'s Notice of Proposed Rulemaking (NPRM) comes at a critical time when the competition that does exist in Texas relies heavily on the use of unbundled network elements (UNEs) as a means of offering Texas consumers the benefits of competition in market for telecommunications and broadband services.

Accordingly, the elimination and/or creation of UNEs by the FCC will have a major impact not only on what happens in Texas but in other states. As part of a recent arbitration, the Texas PUC reexamined certain UNEs in order to evaluate whether there was a continued need for their availability. The Texas PUC concluded, among other things, that local switching should be available to CLECs on an unbundled basis without restriction, as should operator services and directory assistance.

The Texas PUC cautions the FCC from focusing primarily on facilities-based competition at the expense of alternative entry strategies for competitive carriers, such as the UNE platform which has proven to be an important entry strategy for many competitors in the local market for telecommunications services. As discussed in our previous comments in this proceeding, should the FCC choose to make changes to the national list of UNEs, the Texas PUC believes this should be done in full collaboration with state regulatory agencies.

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Provisions of the Telecommunications Act	§	
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	§	

**Reply Comments of the
Public Utility Commission of Texas**

On December 20, 2001, the Federal Communications Commission (FCC or Commission) released a *Notice of Proposed Rulemaking (NPRM)* in this proceeding. In this *NPRM*, the FCC initiated its “first triennial review of the Commission’s policies on unbundled network elements (UNEs)” and sought comment regarding the “circumstances under which incumbent local exchange carriers (ILECs) must make parts of their network available to requesting carriers pursuant to sections 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996 (FTA).”¹

On March 15, 2002, the Public Utility Commission of Texas (Texas PUC) filed brief comments in response to the *NPRM*. At the time the comments were due in this proceeding,² there was an arbitration pending at the Texas PUC regarding UNE pricing.³

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Notice of Proposed Rulemaking at ¶ 1 (Dec. 20, 2001) (*NPRM*).

² On March 11, 2002, the FCC issued an Order extending the filing deadline for comments to April 5, 2002 in response to a joint petition filed by BellSouth Corporation, SBC Communications, Inc., and Qwest Communications, Inc. to extend the deadline in order to complete collection and collation of data necessary to respond to the Commission’s *NPRM*.

The *UNE Pricing Arbitration* proceeding directly addressed several issues posed in this *NPRM*, including local switching, maintenance of existing equipment, forward-looking loop rates, and unbundled dedicated transport. Since that time, the Texas PUC has approved the arbitration decision in the *UNE Pricing Arbitration*.⁴ Accordingly, the Texas PUC respectfully submits these reply comments to the FCC to provide additional information regarding our findings in these areas.

II. Introduction

While it has been over six years since the passage of the Federal Telecommunications Act (FTA)⁵ and almost two years since Southwestern Bell Telephone (SWBT) was granted entry into the long distance market in Texas, competitive local exchange carriers (CLECs) still serve only 14% of the business and residential access lines in Texas.⁶ The competition that does exist in Texas relies heavily on UNEs as an entry mechanism. As such, the Texas PUC is extremely interested in the outcome of this *NPRM*. The elimination and/or creation of UNEs by the FCC will have a major impact on what happens in states, and therefore, the Texas PUC strongly encourages the FCC to utilize the experiences gained from states when making these decisions.

As discussed in our previous comments, the Texas PUC urges the FCC, should it choose to move forward in this proceeding, to do so in full collaboration with state regulatory agencies. We believe it would be most prudent to evaluate and address the myriad of issues within this *NPRM* as a whole, and in concert with the states.

³ *Petition of MCIMetro Access Transmission Services LLC for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Docket No. 24542 (May 1, 2002) (*UNE Pricing Arbitration*).

⁴ The *UNE Pricing Arbitration Award* was approved at the Texas PUC's April 18, 2002 Open Meeting. The current arbitration award is limited to policy issues and contract language. The Texas PUC will conduct a subsequent proceeding to address cost and price issues.

⁵ Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (Act).

⁶ *Local Telephone Competition: Status as of June 30, 2001* at Table 7, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (Feb. 2002).

The Texas PUC endorses the points raised by the National Association of Regulatory Commissioners (NARUC) in its comments to this *NPRM*. In particular, the Texas PUC strongly believes that State regulatory agencies are better positioned to conduct a detailed review of additional unbundling requirements for their state. As the agencies charged with arbitrating and implementing interconnection agreements, the state commissions are uniquely positioned to determine what network elements should be added to or subtracted from the national list for application in their respective states. Alternatively, should the FCC pursue a national standard, the Texas PUC strongly recommends that the FCC give consideration to the Performance Measurements (PMs) already in place in Texas,⁷ and, as suggested, convene a Federal-State Joint Conference on UNEs to inform and coordinate this review.⁸ The Texas PUC believes that such collaboration and coordination with the States is the only way to ensure continued growth and competition in the local market. Fostering competition will further the ultimate goal of the Act by providing customers with greater choice in the telecommunications market.

III. Competition in the Local Market

The local telecommunications network has been developed through infrastructure investments made over several decades. For new entrants, the cost of reconstructing even a small fraction of this infrastructure is extremely high. For example, to overcome this barrier to entry, carriers typically opt for an entry strategy that allows them to gain a foothold in the market without high entry costs. Accordingly, competitive carriers typically initiate their business with resale, and then migrate to UNE based solutions, before evolving into a facilities-based carrier as their customer base grows.

In the *UNE Pricing Arbitration* the Texas PUC considered evidence that supports this competitive entry continuum. During the period January 2000 to June 2001, the UNE-P accounted “for between 88% and 95% of the net gain in competitive activity in

⁷ See *Notice of Proposed Rulemaking in the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, CC Docket No. 01-318, Comments of the Public Utility Commission of Texas (Jan. 22, 2002) (*Texas Comments on UNE Performance Measure NPRM*).

⁸ *Id.* The Texas PUC commends the efforts of the Commission in scheduling workshops in Dallas and Chicago to discuss UNE performance measures with the states.

Texas.”⁹ Additionally, service resale declined more than 5% during this same period. (See Table 1 below).

Table 1. Importance of UNE-P in Texas¹⁰

Entry Strategy	Jan-00	Jun-01	Gain	Percent of Net Gain
UNE-Platform	148,000	1,210,233	1,062,233	87.9% (94.2%)
UNE-Loop	49,000	143,446	94,446	7.8% (8.4%)
Service Resale	347,000	284,472	-62,528	-5.2% (-5.5%)
Other Facilities ¹¹	Deleted due to SWBT Proprietary Claim		114,183 (34,079)	9.4% (3.0%)
Total			1,208,344	

This testimony would seem to confirm the analysis by Daniel R. Shiman and Jessica Rosenworcel, summarized in Table 2 below, that in states with more market experience since section 271 approval, such as New York and Texas, the UNE platform (UNE-P) accounts for a much greater percentage of CLEC served lines as a percentage of all ILEC lines.¹² This is in contrast to nationwide averages and states receiving recent

⁹ *UNE Pricing Arbitration*, Rebuttal Testimony of Joseph Gillan, On Behalf of the Texas UNE-P Coalition, et. al. at 13.

¹⁰ *Id.* at 12-13. The data for the UNE-P, UNE-L, and Service Resale calculations was derived from the Affidavit of Deborah O. Heritage, SBC/Ameritech Director of Compliance, Before the Public Utilities Commission of Ohio, CASE No. 00-942-TP-COI, filed August 2, 2001, as cited in *UNE Pricing Arbitration*, Direct Testimony of Joseph Gillan on Behalf of the Texas UNE-P Coalition, et. al. at 22.

¹¹ The line estimates reflected in Table 1 are derived by dividing the total CLEC originating minutes (terminating with SWBT) by an average usage per line. The top number (CLEC Conservative Estimate) assumes average CLEC usage per line of 1,109 minutes/month less unbundled loops. The bottom number (SWBT Estimate) assumes average CLEC usage per line of 1,800 minutes/month less unbundled loops.

¹² The Shiman and Rosenworcel data compares lines purchased by CLECs as a percentage of all ILEC lines in Texas.

section 271 approval, where resale remains the predominate market entry strategy. Consequently, the Texas PUC would encourage the FCC to monitor further whether market experience with section 271 approval naturally leads to facilities-based competition, as envisioned by the Act.

**Table 2. Percentage of BOC Switched Lines Purchased by CLECs
(as of June 2001)**

				Lines Purchased by CLECs				
State	BOC	Total BOC Lines	BOC % of ILEC Lines	Percent Resale	Percent UNE-P	Percent UNE-L	Percent Total	Total CLEC Lines
Approved 271 Applicants (more than 1 year)								
New York	Verizon	12,050,789	89%	3.0	14.5	2.2	19.6	2,365,206
Texas	SWBT	8,947,790	79%	3.3	13.3	1.1	17.7	1,586,888
Approved 271 Applicants (less than 1 year)								
Oklahoma	SWBT	1,660,815	83%	3.2	1.5	0.3	4.9	81,690
Kansas	SWBT	1,389,742	84%	5.7	3.9	0.3	9.9	137,041
Massachusetts	Verizon	4,636,622	100%	5.8	0.6	1.8	8.2	378,294
Connecticut	Verizon	57,893	99%	3.5	0.0	0.9	4.4	2,547
Pennsylvania	Verizon	6,366,128	77%	2.0	3.7	2.4	8.1	516,057
Missouri	SWBT	2,605,726	75%	4.1	2.3	0.3	6.7	173,384
Arkansas	SWBT	1,048,587	69%	3.3	0.5	1.6	5.4	56,340
Nationwide		141,311,809	75%	3.1	3.0	1.6	7.6	10,765,430

Source: FCC's ARMIS database. BOC Performance Metric Reports (Shiman and Rosenworce, Assessing the Effectiveness of Section 271 Five Years After the Telecommunications Act of 1996)

The Texas PUC, therefore, is concerned that a "flash cut" to requirements demanding facilities-based competition could halt competition before it has had sufficient opportunity to take root. At this early stage in competition, the unrestricted availability of UNEs remains vital to CLECs not only as a market entry strategy but as a means of bringing the benefits of competition to customers.

Consequently, the Texas PUC urges the FCC to consider whether a mere six years after the passage of the Act is an adequate period to curtail the availability of UNEs to CLECs. Prior experiences with deregulation suggest that it takes several years for a market to be sufficiently competitive. For example, the deregulation of customer premises equipment in the 1970's, and the long distance market in the mid-1980's each took longer than six years for the market to mature to a sufficiently competitive state.

Therefore the Texas PUC urges the FCC to maintain the current federal-state cooperative model for determining availability of UNEs. This process, as recently undertaken by the Texas PUC in the *UNE Pricing Arbitration*, has allowed state commissions to make local decisions based on the unique circumstances impacting the local market.

In sum, as noted in Table 1, competition in the Texas local telecommunications market is at a very early stage of development¹³ and the availability of the UNE-P is extremely important to its success. Further, as noted in Table 2, the UNE-P appears to take on even greater importance after 271 approval. Therefore, in time, the Texas PUC believes CLECs will make greater use of their own facilities to provide service to local customers, but at present the UNE remains an important means of market entry and means of providing competitive choice to consumers.

IV. Framework for Unbundling

A. Service and Location Specific Considerations

The FCC seeks comment regarding the circumstances under which ILECs must make parts of their network available to requesting carriers on an unbundled basis pursuant to sections 251(c)(3) and 251(d)(2). Specifically, the Commission requests input as to whether the impairment analysis should be conducted on a service-by-service or market-by-market basis.¹⁴ The FCC also seeks comment regarding additional factors, such as geography, and whether or not a service is local should be taken into account in the unbundling analysis.¹⁵

The Texas PUC continues to support the existence of a national list of UNEs that mandates minimum unbundling requirements. However, it is also essential that states continue to retain the ability to modify those guidelines, depending on any specific regional market conditions that might exist. State regulators, through their roles of

¹³ The FCC's most recent *Local Telephone Competition Report* released February 2002 reveals that while CLEC Market Share in Texas has experienced steady improvement, as of June 2001, CLECs still had only gained a 14% share of the Texas market (this market share information does not consider carriers, who are not required to report, that serve fewer than 10,000 lines).

¹⁴ *NPRM* at ¶ 18.

¹⁵ *Id.* at ¶ 19.

arbitrating and implementing interconnection agreements, remain uniquely positioned to determine what network elements should be added to or subtracted from the national list for application in their respective states. Indeed, the Texas PUC has had occasion to expand the original list of UNEs. For example, the Texas PUC determined that dark fiber and sub loops constituted UNEs at a time when those elements were not included on the national list, thereby increasing an incumbent's unbundling obligations while also increasing competitor's choice of UNEs in Texas.¹⁶ Without such flexibility to increase ILEC obligations where dictated by clear evidence, the Texas PUC would have been unable to address market concerns particular to Texas.

The Commission also questions whether other factors, such as geography and service locality, should be considered when deciding which network elements must be made available. Again, the Texas PUC believes that state commissions are in the best position to decide how geographical and market factors affect UNE provisioning. Because the availability of local service alternatives can vary from region to region, the "necessary" and "impair" standards may produce different results across geographical areas. More recently, in its *UNE Pricing Arbitration*, the Texas PUC reexamined existing UNEs in order to evaluate whether there was a continuing need for their availability. One issue presented was whether or not SWBT should be required to continue to provide local switching as a network element without restriction.¹⁷ After careful consideration, the Texas PUC concluded that CLECs would be impaired without access to SWBT's local switching on an unbundled basis, and that unbundled local switching is necessary for CLECs to compete for customers in Texas at this time. Accordingly, the Texas PUC believes that state commissions should retain the ability to decide, based on specific regional criteria, whether or not a UNE should be provided.

¹⁶ *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al*, Award at sections III.A.4 and III.A.6 (Nov. 8, 1996).

¹⁷ *UNE Pricing Arbitration* Award at DPL Issue No. 8 and 8a. In that proceeding, the parties submitted a Decision Point List (DPL) of issues for the Arbitrators to consider; citations to the *UNE Pricing Arbitration* Award will hereinafter be cited to by the DPL issue number.

B. Triggers for Changes in UNE Availability

The Commission seeks comment regarding phasing out specific UNEs as the availability of alternative facilities increases over time.¹⁸ As the Texas PUC has asserted previously, “if a market contains sufficiently competitive infrastructure components, then the incumbent carrier should no longer be the provider of last resort for those elements.”¹⁹ Therefore, the Texas PUC continues to support the notion that a UNE’s status can change over time. However, the Texas PUC believes such a determination is best made at the state level, where state commissions are best able to assess the market conditions in their state.

For example, as mentioned above, during the *UNE Pricing Arbitration* the Texas PUC examined whether an ILEC should be required to continue to unbundle local switching, regardless of market characteristics or density zone. The Texas PUC determined that in part due to the lack of any non-ILEC wholesale switching provider, as well as the costs associated with deploying facilities, CLECs are impaired without unrestricted access to unbundled local switching from the ILEC.²⁰ The Texas PUC concluded that the local switching network element is a vital part of the UNE-P, which in Texas has proven to be an effective vehicle for bringing consumers the immediate benefits of geographically broad-based competition. As such, the Texas PUC found that requiring local switching to be made available as a UNE in all zones of Texas, without restriction, has competitive merit and is in the public interest.²¹

The Commission also requested input as to establishing boundaries on the length of time a CLEC may use the UNE-P.²² The Texas PUC continues to believe that market conditions that may prevail in one state may not in another. Thus, it is the opinion of the

¹⁸ NPRM at ¶ 45-46.

¹⁹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, Comments of the Public Utility Commission of Texas (May 26, 1999), at Executive Summary (*Texas Comments to Local Competition Second FNRPM*).

²⁰ *UNE Pricing Arbitration Award* at DPL Issue No. 8.

²¹ *Id.* at DPL Issue No. 8a.

²² NPRM at ¶ 45.

Texas PUC that the best way to determine whether or not a particular element should remain unbundled is through an overall market analysis in an individual state, rather than on the capabilities of an individual CLEC. Accordingly, the Texas PUC does not believe that a deadline, in this instance for CLEC use of the UNE-P, is the most prudent course for the FCC to choose in order to promote robust competition. States should be free to determine when an element should be unbundled after considering all relevant evidence surrounding that UNE. The Texas PUC believes that an arbitrary termination date, although arguably administratively efficient, can by its very nature be no more than a best guess, and may in fact hinder rather than promote competition. Simply stated, the Texas PUC cautions the establishment of “triggers” for phasing out certain UNEs without consultation with the states. Specifically, the Texas PUC believes that the better approach is to continue to allow state regulators to refine circumstances unique to that particular state.

V. Specific Network Elements²³

The Texas PUC encourages the FCC to closely examine the data provided by competitive and incumbent companies alike in determining whether it is too early in the deregulatory process to abandon the list of UNEs established in 1999. Further, the Texas PUC believes the insights below gained from our direct experience arbitrating unbundling requirements in various arbitrations show the key role states play in promoting competition.

A. Loop, Subloop and Network Interface Devices

Modifications to existing unbundling requirements regarding loops and NIDs.

The unbundling requirements in the FCC’s *UNE Remand Order*²⁴ require ILECs to provide access to loops, subloops, and network interface devices (NIDs). The loop and subloop are defined as “a transmission facility” and all of its features, functions, and

²³ NPRM at ¶ 47-74.

²⁴ *Implementation of the Local Competition Provisions of the Telecommunications*, 15 FCC Rcd at 3772, 3789, 3801, ¶ 165, 205, 232; see 47 C.F.R. §§ 51.319(a)-(b) (*UNE Remand Order*).

capabilities.²⁵ In light of carriers' experiences and marketplace changes since the passage of the Act, the Texas PUC strongly encourages the FCC to retain the requirements that ILECs provide continued access to the loops, subloops, and NIDs. The Texas PUC agrees with the FCC findings' in the *UNE Remand Order* that without access to dark fiber and these loop capabilities (e.g. DS-1, DS-3, OC-3), carriers are impaired.

Indeed, fiber optic technology is undoubtedly one of the most important elements in a high capacity telecommunications network. The Texas PUC has determined that dark fiber in the feeder segment of the loop (*i.e.*, from the central office to the remote terminal) and in the interoffice segment, constitutes an unbundled network element.²⁶ The Texas PUC believes that this policy encourages efficient use of fiber, and therefore, encourages the FCC to keep these components in the list of UNEs.

Deployment of new facilities by ILECs. The FCC seeks comment on whether the same unbundling requirements should apply to all transmission facilities, or whether it should distinguish between different types of technology, *i.e.* new versus existing facilities, and whether the unique characteristics of the underlying facilities should be taken into consideration.²⁷ The Texas PUC is examining this issue as well in the context of its' *Line Sharing Arbitration*.²⁸ In particular, the Arbitrators examined issues in the following areas: (1) splitter and cabling; (2) fiber-fed digital loop carrier; (3) pre-ordering, ordering, and provisioning; (4) repair and maintenance; and (5) costing and pricing. The Texas PUC is expected to consider the Arbitrators' Award in late May or early June of this year.

²⁵ *Id.*

²⁶ *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al*, Award at sections III.A.4 and III.A.6 (Nov. 8, 1996).

²⁷ *NPRM* at ¶ 50.

²⁸ *Petition of Rhythms Link, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions, and Related Arrangements for Line Sharing*, Docket No. 22469, Revised Arbitration Award (pending) (*Line Sharing Arbitration*). The Texas PUC is currently reviewing the Revised Arbitration Award issued by the Arbitrators on September 21, 2001.

B. Switching

Modifications to existing unbundling requirements regarding switching capabilities. The Texas PUC continues to support the FCC's decision in the *UNE Remand Order*, which required ILECs to provide access to "local switching capability" and "tandem switching capability" for the provision of telecommunication services. For example, the evidence in the *UNE Pricing Arbitration* case supported the finding that the failure of SWBT to provide local switching as a UNE would impair the ability of CLECs to compete in their local market.²⁹ Further, the Texas PUC found that the continued availability of the UNE-P and all of the components of the platform, including local switching, brings the immediate benefit of customer choice in service providers and in service packaging to a larger geographic ubiquitous segment of the population.³⁰ The Texas PUC also determined that there are economic and operational barriers that remain barriers to self-provisioning or using non-SWBT local switching.³¹

In addition, the Texas PUC found that SWBT's argument that the availability of UNE-P crowds out investment in the analog network is without merit.³² The Texas PUC believes that the presence of competitive market forces will provide better market signals and serve as a stronger incentive for carriers to make prudent investment decisions regarding the type of technologies to be deployed.

"Carve-out" to unbundled switching and EEL requirements. In the *UNE Remand Order*, the FCC determined that in density Zone 1, ILECs that provide nondiscriminatory cost-based access to the enhanced extended link (EEL) are not obligated to provide unbundled local switching to requesting carriers for serving

²⁹ *UNE Pricing Arbitration* Award at DPL Issue No. 8.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

customers with four or more lines.³³ The FCC is interested in whether this “carve-out” method to unbundled switching has worked, or whether a revised approach is called for.³⁴

In Texas, SWBT agreed in the Texas 271 Agreement³⁵ to provide the EEL with certain restrictions and for a certain time period.³⁶ SWBT also agreed to combine unbundled loops with unbundled dedicated transport (UDT) and to cross-connect certain unbundled loops or dedicated transport facilities for the CLECs’ provision of circuit switched or packet switched telephone exchange service to the CLECs’ own end-use customers. Alternatively, SWBT agreed to provide CLECs with a secured frame room in which to combine unbundled loops with UDT.³⁷

In the recent *UNE Pricing Arbitration*, the Texas PUC determined that SWBT has yet to provide the EEL on a non-discriminatory basis as required in the *UNE Remand Order*.³⁸ Moreover, the Texas PUC found that the assurance of market certainty requires that the Texas PUC oversee implementation of the EEL to ensure that the EEL is properly available, and that CLECs have an adequate opportunity to transition to market based pricing or to seek alternative providers of local switching. Furthermore, the Texas PUC concluded that the local switching “carve out” may significantly impact the future of competition in the Texas telecommunications industry.³⁹ As such, the Texas PUC determined that if and when SWBT desires to invoke the availability of local switching as a UNE, SWBT has the burden of initiating a proceeding before the Texas PUC for that

³³ *UNE Remand Order*, 15 FCC Rcd at 3822-31, ¶ 276 – 298; 47 C.F.R. § 69.123. The FCC has defined the parameters for the establishment of density pricing zones, with density zone one (Zone1) as the geographic area with the highest access line density and amount of traffic volume.

³⁴ *NPRM* at ¶ 56.

³⁵ *Investigation of Southwestern Bell Telephone Company’s Entry into the Texas InterLATA Telecommunications Market*, Docket No. 16251, Order No. 55 (Oct. 13, 1999)(T2A).

³⁶ T2A Attachment 6 at ¶ 14.7.

³⁷ T2A Attachment 6 at ¶ 14.7.

³⁸ *UNE Pricing Arbitration Award* at DPL Issue No. 8.

³⁹ *Id.*

purpose. In addition, the Texas PUC will evaluate any FCC “carve-out” in effect at that time.⁴⁰

The Texas PUC, also, believes that if the FCC retains a “carve-out” methodology, consideration must be given to identify and define the parameters by which access lines will be counted for purposes of such a “carve out.” This process will allow all interested parties to present evidence on how the FCC’s exception should be applied. The experience gained from the *UNE Pricing Arbitration* showed that SWBT was not able to provide evidence on how access lines would be counted for the purpose of determining how many lines a customer has before invoking the local switching UNE exception.⁴¹

C. Interoffice Transmission Facilities

The Texas PUC continues to support the retention of the FCC’s unbundling requirements for entrance facilities and interoffice facilities, including dark fiber on a shared or common and dedicated basis. The Texas PUC believes that it is important for state commissions to retain the ability to evolve the features of UNEs to reflect changes in the telecommunications industry and in their local markets. For example, in the T2A, SWBT agreed to consider any request from a CLEC for an additional UNE through the special request process.⁴² In sum, the special request process allows a CLEC to submit a written request to SWBT, and if it is determined that the request is technically feasible and otherwise qualifies under the Act, there is a process whereby the network element will be made available within approximately five months. If a party believes that the other party is not requesting, negotiating or processing the special request in good faith, or disputes a determination, price or cost quote, such party may seek mediation or arbitration with the Texas PUC pursuant to section 252.⁴³

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² The UNEs identified in the T2A were: network interface device; local loop; loop distribution; loop feeder; digital loop carrier; local switching; tandem switching; operator services and directory assistance; interoffice transport, including common transport, and dedicated transport; signaling and call-related database; operations support systems functions; and cross-connects. See T2A Attachment 6 at ¶ 2.22.

⁴³ T2A Attachment 6 at ¶ 2.22.1-2.22.11.

Currently, SWBT is required to provide UDT and/or common transport as a UNE to any requesting carrier. In the *UNE Pricing Arbitration*, the Texas PUC declined to allow CLECs to purchase UDT to extend to third parties.⁴⁴ Specifically, the Texas PUC found that UDT should continue to be provided as it currently is by SWBT, based on the requirements specified in the *UNE Remand Order*.⁴⁵

In response to the FCC's request for comment "on the extent to which ILECs have an obligation to modify their existing networks in order to provide access to network elements as required under rules prescribed by the Commission,"⁴⁶ the Texas PUC supports the FCC's recognition that in at least some circumstances, ILECs are not required to build new facilities in order to fulfill competitors' request for network elements. For example, in the T2A, it was agreed that SWBT would offer UDT using then-existing infrastructure facilities and equipment, and that UDT would be provided over such routes as SWBT may elect at its own discretion. As a result, CLECs must use the special request process to request facilities and equipment that are not presently available, or desire special routing of UDT.

The Texas PUC recently expanded this principle and found that the ILEC is not required to maintain obsolete equipment when it upgrades its network. In the *UNE Pricing Arbitration*, the Texas PUC found that SWBT should not be required to maintain obsolete equipment or systems for CLECs when SWBT upgrades its network in perpetuity.⁴⁷ Instead, the Texas PUC required the CLEC to follow a modified version of SWBT's bona fide request (BFR) process, a type of change management process. SWBT will be required to provide advance notice to CLECs of all planned upgrades to its network and to ensure that its network planning and design are coordinated with other carriers so as to facilitate effective and efficient interconnection of the networks. SWBT will be required to maintain the functionality and required characteristics of the elements

⁴⁴ *UNE Pricing Arbitration* Award at DPL Issue No. 6.

⁴⁵ *UNE Remand Order* at ¶ 318-368.

⁴⁶ *NPRM* at ¶ 63.

⁴⁷ *UNE Pricing Arbitration* Award at DPL Issue No. 2.

purchased by the CLEC for a period of up to 12 months, exclusive of the notice period, unless otherwise agreed to between the parties.

D. Other Network Elements

Operation Support System (OSS). The Texas PUC urges the FCC to retain the unbundling requirements for OSS functions,⁴⁸ signaling networks and call-related databases. The Texas PUC generally agrees with the FCC's conclusion in its *Local Competition First Report and Order* that a "necessary" network element is an element that is a prerequisite to competition.⁴⁹ As recognized by the Commission, OSS is a prime example of a proprietary element that must be provided to competitors as a prerequisite to competition. Without nondiscriminatory access to such systems, competitors' access to other network elements (such as loops) becomes uneconomic. If a competitor is not able to gain access to the ILEC's proprietary OSS functions, for example in order to obtain nondiscriminatory provisioning intervals, the new entrant will be held at a significant competitive disadvantage. Consequently, we continue to believe that the concerns regarding availability of non-ILEC networks should be included in the evaluation of "necessary" standards.⁵⁰

Line Information Database (LIDB). LIDB⁵¹ contains records associated with customer line numbers and special billing numbers⁵² that CLECs use to facilitate completion of calls or services. The Texas PUC made the following decisions with respect to LIDB in the *UNE Pricing Arbitration*:

⁴⁸ OSS functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by SWBT's databases and information. In the T2A, SWBT agreed to provide CLEC access to its OSS functions through electronic interfaces. For more information see specifically T2A Attachment 6 at Sections 10.1-10.2., and Attachments 7, 8, 9, and 10.

⁴⁹ *Texas Comments to Local Competition Second FNRPM* at 6.

⁵⁰ *Id.* at 7.

⁵¹ The LIDB is a transaction-oriented database that functions as a centralized repository for data storage and retrieval.

⁵² Such as ABS validation data, originating line number screening data, zip code data, and calling name information.

- Ruled that SWBT was not required to provide bulk/batch downloads of any or all of the data contained in the LIDB, including CNAM (Calling Name) database.⁵³ The Texas PUC relied on and supports the FCC rules that expressly provide CLECs with access to all call-related databases (for purposes of switch query and database response) via physical access at the signal transfer point.
- Found that existing limitations on proprietary information contained in call-related databases are appropriate.⁵⁴
- Found that although SWBT is responsible for LIDB/CNAM errors, the CLEC is responsible for the accuracy of its data stored in SWBT's LIDB.⁵⁵
- Decided to retain LIDB's local use restriction and rates. LIDB queries emanating from toll carriers are not required to be priced at forward-looking cost-based rates. The Texas PUC found that it should maintain the status quo, and query rates should be based on Texas-specific costs since the originating jurisdiction of all types of LIDB queries is indeterminable.⁵⁶

Advanced Intelligent Network (AIN). In the *UNE Pricing Arbitration* the Texas PUC also addressed issues concerning AIN software and features.⁵⁷ The Texas PUC supports the ruling in the *UNE Remand Order* that provides that AIN service software is proprietary and exempt from unbundling requirements only after the ILEC provides CLECs with fully functional access to Service Creation Environment (SCE) and Service Management System (SMS) in a manner that allows CLECs to configure their own AIN services. In the *UNE Pricing Arbitration*, the Texas PUC found that SWBT has not proven that such access is available, and therefore must provide the CLEC access to its proprietary AIN features and provide the CLEC UNE-P customers' access to AIN based features and functions. If and when SWBT seeks to treat its AIN service software as

⁵³ *UNE Pricing Arbitration* Award at DPL Issue No. 15 and 18.

⁵⁴ *Id.* at DPL Issue No. 17.

⁵⁵ *Id.* at DPL Issue No. 21.

⁵⁶ *Id.* at DPL Issue No. 26.

⁵⁷ *Id.* at DPL Issue Nos. 22 and 23. The AIN is a network architecture that uses distributed intelligence in centralized databases to control call processing and manage network information, rather than performing those functions at every switch. In the T2A, SWBT agreed to provide CLECs with access to its AIN call related database at negotiated rates, terms, and conditions. T2A Attachment 6, at ¶ 9.7.1.

proprietary and exempt from unbundling requirements, SWBT has the burden of initiating a proceeding before the Texas PUC and showing that such access is operational and will not impair the network.⁵⁸

VI. Role of the States and Implementation Issues

During this time of significant transition in the telecommunications industry, federal and state regulators will be instrumental in assuring that local competition continues to take root and that the deployment of advanced services is encouraged. We sincerely believe that federal and state cooperation is essential to determine the effects upon end users and to ensure that end users fully participate in the benefits of competition. We commend the Commission for organizing UNE performance workshops in several locations around the country. The Texas PUC believes that federal and state regulators must ensure that these decisions are in the public interest, and result in a standard applicable to both the FCC and the states. Additionally, should the Commission determine it is appropriate to restructure the current federal-state model for overseeing UNEs, the Texas PUC believes it appropriate to convene a Federal-State Joint Conference on UNEs to ensure that unique aspects of each state market are properly considered.

VII. Conclusion

The Texas PUC appreciates the opportunity to provide additional comment on the FCC's *NPRM* and to assist the FCC in developing long-term solutions to the issues addressed.

⁵⁸ *UNE Pricing Arbitration* Award at DPL Issue No. 22.

Respectfully submitted,

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May 2, 2002

/original signed/

**Brett A. Perlman
Commissioner**

/original signed/

**Rebecca Klein
Commissioner**